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## IN THE SUPREME COURT OF THE UNITED STATES.

Nos. 120, 170, 289 and 290.

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EDGAR G. MONDOU, Plaintiff in Error *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

In error to the Supreme Court of Errors of the State of Connecticut.

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NORTHERN PACIFIC RAILWAY CO., Plaintiff in Error *v.* BESSIE BABCOCK, Administratrix.

In error to the Circuit Court of the United States for the District of Minnesota.

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NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO., Plaintiff in Error *v.* MARY AGNES WALSH, Administratrix.

In error to the Circuit Court of the United States for the District of Massachusetts.

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MARY AGNES WALSH, Administratrix, Plaintiff in Error *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

In error to the Circuit Court of the United States for the District of Massachusetts.

October Term, 1911.

**1. Interstate and Foreign Commerce—Regulation and Control by Congress.**—Congress, in the exertion of its power over interstate commerce, may regulate the relations of common carriers by railroad and their employees, while both are engaged in such commerce, subject always to the limitations prescribed in the Constitution, and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and their employees are engaged.

**2. Constitutional Law—Vested Right in Rule of Law.**—A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will of the legislature, unless prevented by constitutional limitations.

**3. Interstate and Foreign Commerce—Regulation by Congress—Discretion of Congress.**—It undoubtedly rested with Congress to determine whether a national law, regulating the liability of railroads

engaged in interstate commerce to their employees, operating uniformly in all the states upon all carriers by railroad engaged in interstate commerce, would better subserve the needs of that commerce.

**4. Same—Federal Employers' Liability Act—Constitutionality—Scope.**—It is not a valid objection that the federal Employers' Liability Act of April 22, 1908, as amended April 5, 1910, embraces instances where the causal negligence is that of an employee engaged in intrastate commerce; for such negligence, when operating injuriously upon an employee engaged in interstate commerce, has the same effect upon that commerce as if the negligent employee were also engaged therein.

**5. Same—Interference with Liberty of Contract.**—The provision in § 5, of the federal Employers' Liability Act of April 22, 1908, as amended April 5, 1910, declaring void any contract, rule, regulation or device, the purpose or intent of which is to enable a carrier to exempt itself from the liability which the act creates, is not repugnant to the Fifth Amendment to the Constitution as an unwarranted interference with the liberty of contract.

**6. Same—Classification.**—Although it is true that the liability which the act creates is imposed only on interstate carriers by railroad, although there are other interstate carriers, and is imposed for the benefit of all employees of such carriers by railroad who are employed in interstate commerce, although some are not subjected to the peculiar hazards incident to the operation of trains or to hazards that differ from those to which other employees in such commerce, not within the act, are exposed, it does not follow that this classification is violative of the "due process of law" clause of the Fifth Amendment, even if it be assumed that that clause is equivalent to the "equal protection of the laws" clause of the Fourteenth Amendment, which is the most that can be claimed for it here.

**7. Federal Employers' Liability Act Constitutional.**—Congress has not exceeded its power by prescribing the regulations embodied in the present act relating to the liability of common carriers by railroad to their employees in certain cases.

**8. Action of Congress Supersedes State Laws.**—Now that Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is.

**9. Jurisdiction of State Courts—Right to Decline Same.**—The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the states, and thereby established a policy for all.

**10. Federal Employer's Liability Act Enforcible in State Courts.—**Rights arising under the act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

[January 15, 1912.]

No. 120.

This was an action by a citizen of Connecticut against a railroad corporation of that State to recover for personal injuries suffered by the plaintiff while in the defendant's service. The injuries occurred in Connecticut August 5, 1908, the action was commenced in one of the Superior Courts of that State in October following, and the right of action was based solely on the act of Congress of April 22, 1908. According to the complaint, the injuries occurred while the defendant, as a common carrier by railroad, was engaged in commerce between some of the States and while the plaintiff, as a locomotive fireman, was employed by the defendant in such commerce, and the injuries proximately resulted from negligence of the plaintiff's fellow servants, who also were employed by the defendant in such commerce. A demurrer to the complaint was interposed upon the grounds, first, that the act of Congress was repugnant in designated aspects to the Constitution of the United States, and, second, that even if the act were valid a right of action thereunder could not be enforced in the courts of the State. The demurrer was sustained, judgment was rendered against the plaintiff, the judgment subsequently was affirmed by the Supreme Court of Errors of the State (82 Conn. 373) upon the authority of *Hoxie v. N. Y., N. H. & H. R. Co.*, 82 Conn. 352, and the plaintiff then sued out the present writ of error.

No. 170.

This was an action by the personal representative of a deceased employee of a railroad corporation to recover, for the exclusive benefit of the surviving widow, for the death of the employee, which resulted from an injury suffered in the course of his employment. The injury and death occurred in Montana, September 25, 1908, the action was commenced in the Circuit Court of the United States for the District of Minnesota, October 4, 1909, and the right of action was based solely on the act of Congress before mentioned. It appeared, from the complaint, that the injury occurred while the defendant, as a common carrier by railroad, was engaged in commerce between some of the States, and while the deceased, as a locomotive fireman, was employed by the defendant in such commerce; that the injury proximately resulted from negligence of fellow servants of the deceased, who also were employed by the defendant in such commerce; that the deceased resided in Montana and

died without issue or a surviving father or mother, but leaving a widow and also a sister, and that if the statutes of Montana were applicable the recovery should be for the equal benefit of the widow and sister, and not for the exclusive benefit of the widow, as prayed in the complaint and as provided in the act of Congress. The defendant challenged the validity of the act by a demurrer to the complaint, and in the subsequent proceedings insisted that the recovery, if any, should be for the benefit of the widow and sister jointly and not for the benefit of the widow alone, but the demurrer and the insistence were overruled and judgment was rendered for the plaintiff for the exclusive benefit of the widow, as prayed. By a direct writ of error the defendant seeks a reversal of that judgment.

Nos. 289 and 290.

These writs of error relate to the judgment in a single case. It was an action by the personal representative of a deceased employee of a railroad corporation to recover, for the benefit of the surviving widow and children, for the death of the employee, which resulted from an injury suffered in the course of his employment. The injury and death occurred in Connecticut, February 11, 1909, the action was commenced in the Circuit Court of the United States for the District of Massachusetts in July following and the right of action asserted in the second count of the declaration was based on the act of Congress before mentioned. There were several other counts, but they may be passed without special notice. It was charged in the second count that the injury occurred while the defendant, as a common carrier by railroad, was engaged in commerce between some of the States and while the deceased, in the course of his employment by the defendant in such commerce, was engaged in replacing a drawbar on one of the defendant's cars then in use in such commerce, and that the injury proximately resulted from negligence of fellow servants of the deceased in pushing other cars against the one on which he was working. A demurrer to that count challenged the validity of the act of Congress, but the demurrer was overruled. The defendant answered, putting in issue all that was stated in that count, and also alleging that the deceased, by his own negligence, contributed to the injury which resulted in his death and therefore that the damages should be diminished in proportion to the amount of negligence attributable to him. A trial to the court and a jury resulted in a verdict and judgment for the plaintiff upon the second count, and there was a judgment for the defendant upon the other counts. Each party has sued out a direct writ of error from this court. The defendant calls in question the ruling upon its demurrer and other rulings in the progress of the cause, notably

such as related to the nature of the employment in which the deceased and the fellow servants whose conduct was in question were engaged at the time of the injury and to the admeasurement of the damages. The plaintiff makes no complaint of the judgment upon the second count and, if it shall be affirmed, wishes to waive her objections to the judgment upon the other counts.

The act whose validity is drawn in question, 35 Stat. 65, ch. 149, and the amendment of April 5, 1910, 36 Stat. 291, ch. 143, are as follows:

"An act relating to the liability of common carriers by railroad to their employees in certain cases.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbeds, works, boats, wharves, or other equipment.

"Sec. 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

"Sec. 3. That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of

the provisions of this act to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

"Sec. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

"Sec. 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void: Provided, That in any action brought against any such common carrier under or by virtue of any of the provisions of this act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the persons entitled thereto on account of the injury or death for which said action was brought.

"Sec. 6. That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

"Sec. 7. That the term 'common carrier' as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

"Sec. 8. That nothing in this act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the act of Congress entitled 'An act relating to liability of common carriers in the District of Columbia and Territories, and to common carriers engaged in commerce between the States and between the States and foreign nations to their employees,' approved June eleventh, nineteen hundred and six.

"Approved April 22, 1908."

"An act to amend an act entitled 'An act relating to the liability of common carriers by railroad to their employees in cer-

tain cases,' approved April twenty-second, nineteen hundred and eight.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled 'An act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April twenty-second, nineteen hundred and eight, be amended in section six so that said section shall read:

"Sec. 6. That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

"Under this act an action may be brought in a Circuit Court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several States, and no case arising under this act and brought in any State court of competent jurisdiction shall be removed to any court of the United States.

"Sec. 2. That said act be further amended by adding the following section as section nine of said act:

"Sec. 9. That any right of action given by this act to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

"Approved, April 5, 1910."

MR. JUSTICE VAN DEVANTER, after stating the cases as above, delivered the opinion of the Court.

The principal questions presented in these cases as discussed at the bar and in the briefs are: 1. May Congress, in the exertion of its power over interstate commerce regulate the relations of common carriers by railroad and their employees while both are engaged in such commerce? 2. Has Congress exceeded its power in that regard by prescribing the regulations which are embodied in the act in question? 3. Do those regulations supersede the laws of the States in so far as the latter cover the same field? 4. May rights arising under those regulations be enforced, as of right, in the courts of the States when their jurisdiction, as fixed by local laws, is adequate to the occasion?

The clauses in the Constitution (Art. I, sec. 8, clauses 3 and 18) which confer upon Congress the power "to regulate commerce . . . among the several States" and "to make all laws



which shall be necessary and proper" for the purpose have been considered by this court so often and in such varied connections that some propositions bearing upon the extent and nature of this power have come to be so firmly settled as no longer to be open to dispute, among them being these:

1. The term "commerce" comprehends more than the mere exchange of goods. It embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

2. The phrase "among the several States" marks the distinction, for the purpose of governmental regulation, between commerce which concerns two or more States and commerce which is confined to a single State and does not affect other States, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the States severally.

3. "To regulate," in the sense intended, is to foster, protect, control and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.

4. This power over commerce among the States, so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce.

5. Among the instruments and agents to which the power extends are the railroads over which transportation from one State to another is conducted, the engines and cars by which such transportation is effected, and all who are in any wise engaged in such transportation, whether as common carriers or as their employees.

6. The duties of common carriers in respect of the safety of their employees, while both are engaged in commerce among the States, and the liability of the former for injuries sustained by the latter, while both are so engaged, have a real or substantial relation to such commerce, and therefore are within the range of this power. *Cooley v. Board of Wardens*, 12 How. 299, 315-317; *The Lottawanna*, 21 Wall. 558, 577; *Sherlock v. Alling*, 93 U. S. 99, 103-105; *Smith v. Alabama*, 124 U. S. 465, 479; *Nashville etc. Ry. Co. v. Alabama*, 128 U. S. 96, 99; *Peirce v. Van Dusen*, 78 Fed. 693, 698-700; *Baltimore & Ohio R. R. Co. v. Baugh*, 149 U. S. 368, 378; *Patterson v. Bark Eudora*, 190 U.

S. 169, 176; *Johnson v. Southern Pacific Co.*, 196 U. S. 1; *Schlemmer v. Buffalo, etc., Ry. Co.*, 205 U. S. 1; *Employers' Liability Cases*, 207 U. S. 463, 495; *Adair v. United States*, 208 U. S. 161, 176-178; *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Railway Co. v. United States*, 222 U. S. 20.

As is well said in the brief prepared by the late Solicitor-General: "Interstate commerce—if not always, at any rate when the commerce is transportation—is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted, if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

In view of these settled propositions, it does not admit of doubt that the answer to the first of the questions before stated must be that Congress, in the exertion of its power over interstate commerce, may regulate the relations of common carriers by railroad and their employees, while both are engaged in such commerce, subject always to the limitations prescribed in the Constitution, and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and their employees are engaged.

We come, then, to inquire whether Congress has exceeded its power in that regard by prescribing the regulations embodied in the present act. It is objected that it has, (1) because the abrogation of the fellow servant rule, the extension of the carrier's liability to cases of death, and the restriction of the defenses of

contributory negligence and assumption of risk have no tendency to promote the safety of the employees or to advance the commerce in which they are engaged; (2) because the liability imposed for injuries sustained by one employee through the negligence of another, although confined to instances where the injured employee is engaged in interstate commerce, is not confined to instances where both employees are so engaged; and (3) because the act offends against the Fifth Amendment to the Constitution (a) by unwarrantably interfering with the liberty of contract and (b) by arbitrarily placing all employers engaged in interstate commerce by railroad in a disfavored class and all their employees engaged in such commerce in a favored class.

Briefly stated, the departures from the common law made by the portions of the act against which the first objection is leveled are these: (a) The rule that the negligence of one employee resulting in injury to another was not to be attributed to their common employer, is displaced by a rule imposing upon the employer responsibility for such an injury, as was done at common law when the injured person was not an employee; (b) the rule exonerating an employer from liability for injury sustained by an employee through the concurring negligence of the employer and the employee is abrogated in all instances where the employer's violation of a statute enacted for the safety of his employees contributes to the injury, and in other instances is displaced by the rule of comparative negligence, whereby the exoneration is only from a proportional part of the damages corresponding to the amount of negligence attributable to the employee; (c) the rule that an employee was deemed to assume the risk of injury, even if due to the employer's negligence, where the employee voluntarily entered or remained in the service with an actual or presumed knowledge of the conditions out of which the risk arose, is abrogated in all instances where the employer's violation of a statute enacted for the safety of his employees contributed to the injury; and (d) the rule denying a right of action for the death of one person caused by the wrongful act or neglect of another is displaced by a rule vesting such a right of action in the personal representatives of the deceased for the benefit of designated relatives.

Of the objection to these changes it is enough to observe:

First: "A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will . . . of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common

law as they are developed, and to adapt it to the changes of time and circumstances." *Munn v. Illinois*, 94 U. S. 113, 134; *Martin v. Pittsburg & Lake Erie R. R. Co.*, 203 U. S. 284, 294; *The Lottawanna*, 21 Wall. 558, 577; *Western Union Telegraph Co. v. Commercial Milling Co.*, 218 U. S. 406, 417.

Second. The natural tendency of the changes described is to impel the carriers to avoid or prevent the negligent acts and omissions which are made the bases of the rights of recovery which the statute creates and defines; and, as whatever makes for that end tends to promote the safety of the employees and to advance the commerce in which they are engaged, we entertain no doubt that in making those changes Congress acted within the limits of the discretion confided to it by the Constitution. *Lottery Case*, 188 U. S. 321, 353, 355; *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 203.

We are not unmindful that that end was being measurably attained through the remedial legislation of the several States, but that legislation has been far from uniform, and it undoubtedly rested with Congress to determine whether a national law, operating uniformly in all the States upon all carriers by railroad engaged in interstate commerce, would better subserve the needs of that commerce. *The Lottawanna*, 21 Wall. 558, 581-582; *Baltimore & Ohio R. R. v. Baugh*, 149 U. S. 368, 378-379.

The second objection proceeds upon the theory that, even although Congress has power to regulate the liability of a carrier for injuries sustained by one employee through the negligence of another where all are engaged in interstate commerce, that power does not embrace instances where the negligent employee is engaged in intrastate commerce. But this is a mistaken theory, in that it treats the source of the injury, rather than its effect upon interstate commerce, as the criterion of congressional power. As was said in *Southern Railway Co. v. United States*, 222 U. S. 20, 27, that power is plenary and competently may be exerted to secure the safety of interstate transportation and of those who are employed therein, no matter what the source of the dangers which threaten it. The present act, unlike the one condemned in *Employers' Liability Cases*, 207 U. S. 463, deals only with the liability of a carrier engaged in interstate commerce for injuries sustained by its employees while engaged in such commerce. And this being so, it is not a valid objection that the act embraces instances where the causal negligence is that of an employee engaged in intrastate commerce; for such negligence, when operating injuriously upon an employee engaged in interstate commerce, has the same effect upon that commerce as if the negligent employee were also engaged therein.

Next in order is the objection that the provision in § 5, declaring void any contract, rule, regulation or device, the purpose

or intent of which is to enable a carrier to exempt itself from the liability which the act creates, is repugnant to the Fifth Amendment to the Constitution as an unwarranted interference with the liberty of contract. But of this it suffices to say, in view of our recent decisions in *Chicago, Burlington & Quincy Railroad Co. v. McGuire*, 219 U. S. 549; *Atlantic Coast Line Railroad Co. v. Riverside Mills*, Id. 186, and *Baltimore & Ohio Railroad Co. v. Interstate Commerce Commission*, 221 U. S. 612, that if Congress possesses the power to impose that liability, which we here hold that it does, it also possesses the power to insure its efficacy by prohibiting any contract, rule, regulation or device in evasion of it.

Coming to the question of classification, it is true that the liability which the act creates is imposed only on interstate carriers by railroad, although there are other interstate carriers, and is imposed for the benefit of all employees of such carriers by railroad who are employed in interstate commerce, although some are not subjected to the peculiar hazards incident to the operation of trains or to hazards that differ from those to which other employees in such commerce, not within the act, are exposed, but it does not follow that this classification is violative of the "due process of law" clause of the Fifth Amendment. Even if it be assumed that that clause is equivalent to the "equal protection of the laws" clause of the Fourteenth Amendment, which is the most that can be claimed for it here, it does not take from Congress the power to classify, nor does it condemn exertions of that power merely because they occasion some inequalities. On the contrary, it admits of the exercise of a wide discretion in classifying according to general, rather than minute, distinctions, and condemns what is done only when it is without any reasonable basis, and therefore is purely arbitrary. *Lindsley v. Carbonic Acid Gas Co.*, 220 U. S. 61, 78. Tested by these standards, this classification is not objectionable. Like classifications of railroad carriers and employees for like purposes, when assailed under the equal protection clause, have been sustained by repeated decisions of this court. *Missouri Pacific Railway Co. v. Mackey*, 127 U. S. 205; *Louisville & Nashville Railroad Co. v. Melton*, 218 U. S. 36; *Mobile, Jackson & Kansas City Railroad Co. v. Turnipseed*, 219 U. S. 35.

It follows that the answer to the second of the questions before stated must be that Congress has not exceeded its power by prescribing the regulations embodied in the present act.

The third question, whether those regulations supersede the laws of the States in so far as the latter cover the same field, finds its answer in the following extracts from the opinion of Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316:

(p. 405) "If any one proposition could command the univer-

sal assent of mankind, we might expect it would be this—that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The Nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it, by saying, ‘this Constitution, and the laws of the United States, which shall be made in pursuance thereof, . . . shall be the supreme law of the land,’ and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, ‘anything in the constitution or laws of any State to the contrary notwithstanding.’

(p. 426) “This great principle is, that the Constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them.”

And particularly apposite is the repetition of that principle in *Smith v. Alabama*, 124 U. S. 465, 473:

“The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority.”

True, prior to the present act the laws of the several States were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employees while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police power of the States in the absence of action by Congress. *Sherlock v. Alling*, 93 U. S. 99; *Smith v. Alabama*, 124 U. S. 465, 473, 480, 482; *Nashville, etc., Railway v. Alabama*, 128 U. S. 96, 99; *Reid v. Colorado*, 187 U. S. 137, 146. The inaction of Congress, however, in no wise affected its power over the subject. *The Lottawanna*, 21 Wall. 558, 581; *Gloucester*

*Ferry Co. v. Pennsylvania*, 114 U. S. 196, 215. And now that Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is. *Gulf, Colorado and Santa Fe Railway Co. v. Hefley*, 158 U. S. 98, 104; *Southern Railway Co. v. Reid*, No. 487, ante; *Northern Pacific Railway Co. v. Washington*, No. 136, ante.

We come next to consider whether rights arising under the congressional act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion. The first of the cases now before us was begun in one of the Superior Courts of the State of Connecticut, and, in that case, the Supreme Court of Errors of the State answered the question in the negative. That, however, was not because the ordinary jurisdiction of the Superior Courts, as defined by the constitution and laws of the State, was deemed inadequate or not adapted to the adjudication of such a case, but because the Supreme Court of Errors was of opinion (1) that the congressional act impliedly restricts the enforcement of the rights which it creates to the Federal courts, and (2) that, if this be not so, the Superior Courts are at liberty to decline cognizance of actions to enforce rights arising under that act, because (a) the policy manifested by it is not in accord with the policy of the State respecting the liability of employers to employees for injuries received by the latter while in the service of the former, and (b) it would be inconvenient and confusing for the same court, in dealing with cases of the same general class, to apply in some the standards of right established by the congressional act and in others the different standards recognized by the laws of the State.

We are quite unable to assent to the view that the enforcement of the rights which the congressional act creates was originally intended to be restricted to the Federal courts. The act contains nothing which is suggestive of such a restriction, and in this situation the intention of Congress was reflected by the provision in the general jurisdictional act. "That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States." 25 Stat. 433, c. 866, § 1. *Robb v. Connolly*, 111 U. S. 624, 637; *United States v. Barnes*, , ante. This is emphasized by the amendment engrafted upon the original act in 1910, to the effect that "The jurisdiction of the courts of the United States under this act shall be concurrent with that of the several States, and no case arising under this act and

brought in any State court of competent jurisdiction shall be removed to any court of the United States." The amendment, as appears by its language, instead of granting jurisdiction to the State courts, presupposes that they already possessed it.

Because of some general observations in the opinion of the Supreme Court of Errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of State courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the Supreme Court of Errors that the Superior Courts of the State are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where the right of action arose under the laws of that State, but also in cases where it arose in another State, under its laws, and in circumstances in which the laws of Connecticut give no right of recovery, as where the causal negligence was that of a fellow servant.

The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. As was said by this court in *Claffin v. Houseman*, 93 U. S. 130, 136, 137:

"The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereign as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereign. . . . If an act of Congress gives a penalty [meaning civil and remedial] to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided



otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. . . . It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, as was so clearly shown by Chief Justice Taney, in the case of *Ableman v. Booth*, 21 How. 506; and hence the State courts have no power to revise the action of the Federal courts, nor the Federal the State, except where the Federal Constitution or laws are involved. But this is no reason why the State courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied."

We are not disposed to believe that the exercise of jurisdiction by the State courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication. Besides, it is neither new nor unusual in judicial proceedings to apply different rules of law to different situations and subjects, even although possessing some elements of similarity, as where the liability of a public carrier for personal injuries turns upon whether the injured person was a passenger, an employee or a stranger. But it never has been supposed that courts are at liberty to decline cognizance of cases of a particular class merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.

We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

In No. 289 several rulings in the progress of the cause, not covered by what already has been said, are called in question, but it suffices to say of them that they have been carefully considered, and that we find no reversible error in them.

In Nos. 170, 289 and 290 the judgments are affirmed, and in

No. 120 the judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

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**Note.**

This decision of the Supreme Court of the United States is one of great importance, both in its immediate sequence and the consequences that may be reasonably expected to flow therefrom in future decisions applying the same principle to fields of jurisdiction heretofore considered to belong exclusively to the state courts. It is startling, but when we examine the opinion closely and the reasoning upon which it is based, it seems to be a logical sequence from the already established doctrine that when Congress legislates upon a subject-matter over which it is given jurisdiction by the constitution, then all conflicting state legislation upon the same subject-matter must yield and pass out of existence. Of course if the legislation of Congress as to the liability of interstate railroad carriers to their employees is enforceable in the state courts, and, as this decision says, the state courts can not refuse to take jurisdiction of actions brought thereunder, then it would be intolerable that the degree of liability of such a carrier should depend upon whether a suitor elects, whether ignorantly or designedly, to sue under the federal statute or a state statute prescribing a different rule of liability.

It will be noted however, that this only applies to interstate railroads, and the principle is applicable only to fields of legislation which are constitutionally open to Congress, although the rapidity with which these are being extended bids fair to more and more circumscribe and crowd out state courts and governments.

There seems to be no new principle involved, as the points are well settled that Congress has authority to legislate for the protection of the lives and limbs of employees of railroads engaged in interstate commerce, and as to the qualification, duties, and liabilities of employees and others on railway trains engaged in such commerce; and that such legislation will supersede state legislation on the subject, although until such legislation it is clearly within the competency of the states to legislate on such subjects. Also it is clear that state laws may be enforced in the appropriate federal tribunal whether it be a court of equity, of admiralty, or of common law, and, conversely, except where otherwise provided by statute, the state and federal courts exercise concurrent jurisdiction with respect to suits arising under the statutes and laws of the United States. See *Claffin v. Houseman*, 93 U. S. 130, 137, 23 L. Ed. 833; *Yates v. Jones Nat. Bank*, 206 U. S. 158, 51 L. Ed. 1002. There are many decisions upholding each of these principles. As said in *Davis v. Beason*, 133 U. S. 333, 348, 33 L. Ed. 637, "the cases in which the legislation of Congress will supersede the legislation of a state or territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. There the action of Congress may well be considered as covering the entire ground." See cases cited in (*Michie*) U. S. E., vol. 4, pp. 176, 177, 1059, 1064, 1169; 7 *id.*, pp. 313, 320, 328, 346.

This report of this case will reach our subscribers earlier than it would be accessible to them in any other publication, and we expect to give the same earliest publication of cases of like importance in future whenever it shall be possible, in view of the fact that the *LAW REGISTER* appears always and only upon the first of each month.

J. F. M.